

1 WRITTEN DECISION - NOT FOR PUBLICATION

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SEP 30 2005

CLERK, U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

ENTERED 9/30/05  
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SEP 30 2005  
CLERK U.S. BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
BY DEPUTY

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8 UNITED STATES BANKRUPTCY COURT

9 SOUTHERN DISTRICT OF CALIFORNIA

10 In re ) CASE NO. 04-05472-H11  
11 VIATICAL LIQUIDITY LLC., )  
Debtor. ) ORDER RE TIMELINESS OF  
12 ) CFO SOLUTIONS' CLAIM #407

13 On August 29, 2005, Viatical Liquidity (the "Debtor") objected  
14 to Claim #407 filed by CFO Solutions, Inc. ("CFO Solutions") on the  
15 ground that it was filed after the December 20, 2004, claims bar  
16 date.

17 On September 15, 2005, CFO Solutions filed its response  
18 attaching a copy of its proof of claim dated December 17, 2004, and  
19 a copy of the DHL Express tracking receipt which shows that the  
20 envelope was shipped on December 17, 2004, and signed for and  
21 received by the Court on December 20, 2004. It is undisputed that  
22 the envelope was properly addressed and received by the Court by  
23 the December 20, 2004, claims bar date. See In re Bucknum, 951  
24 F.2d 204, 207 (9th Cir. 1991) ("Mail that is properly addressed,  
25 stamped and deposited into the mails is presumed to be received by  
26 the addressee.") (citation omitted).

27 The Debtor contends however that CFO Solutions has not  
28 provided sufficient evidence that the DHL Express envelope actually

1 contained its proof of claim because it is not listed on the claims  
2 docket.

3 The Court finds that the weight of the evidence favors a  
4 finding that CFO Solutions, Inc. filed its proof of claim in a  
5 timely manner. In its response letter, CFO Solutions's president  
6 stated that "We enclose another copy of our Proof of Claim form  
7 that CFO signed on December 17, 2004." In addition, the DHL  
8 Express tracking receipt shows the envelope was shipped on the same  
9 date. The inference is that CFO's proof of claim was enclosed in  
10 the DHL Express envelope.

11 The Debtor offered no evidence to the contrary nor an  
12 explanation as to what other document CFO Solutions would have sent  
13 to the Court on the December 17, 2004, date using the DHL Express  
14 private shipping service.

15 WHEREFORE, IT IS ORDERED, ADJUDGED, AND DECREED THAT:

16 The Debtor's objection to CFO Solutions, Inc.'s claim on the  
17 ground that it was filed after the bar date is overruled.

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19  
20 Dated: September 30, 2005

21   
22 JOHN J. HARGROVE  
23 UNITED STATES BANKRUPTCY JUDGE  
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**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF CALIFORNIA  
325 West F Street, San Diego, California 92101-6991**

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In re: Bankruptcy Case No. 04-05472-H11

**CERTIFICATE OF MAILING**

The undersigned, a regularly appointed and qualified clerk in the office of the United States Bankruptcy Court for the Southern District of California, at San Diego, hereby certifies that a true copy of the attached document, to wit:

**ORDER RE TIMELINESS OF CFO SOLUTIONS' CLAIM #407**

was enclosed in a sealed envelope bearing the lawful frank of the bankruptcy judges and mailed to each of the parties at their respective addresses listed below:

**Attorney(s) for Debtor:**

**Ronald M. Toigo, Esq.  
Sparber Rudolph Annen, APLC  
701 "B" Street, Suite 1000  
San Diego, CA 92101**

**CFO Solutions, Inc.  
Attn: J. Michael Stolp, President  
P.O. Box 91567  
Albuquerque, New Mexico 87199**

Said envelope(s) containing such document was deposited by me in a regular United States Mail Box in the City of San Diego, in said District on September 30, 2005.



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Karen Nickerson (Deputy Clerk)  
Judicial Assistant to the Honorable John J. Hargrove